DAYASAR CORP. SDN. BHD.

v.

C.P. NG & CO. SDN. BHD.

HIGH COURT MALAYA, JOHOR BAHRU
ABU MANSOR ALI J
[COMPANIES WINDING-UP NO. 42-144 OF 1988]
9 MARCH 1989

COMPANY LAW: *Winding-up - Striking out of petition - Respondent carrying on business and with registered office in Kuching, Sarawak - Whether High Court of Malaya or High Court of Borneo has jurisdiction - Article 121 (1) of Federal Constitution, ss. 3, 23(1)(b) of the Courts of Judicature Act 1964 - Forum convenience in favour of respondent.*

The petitioner had filed a petition for the winding-up of the respondent company in the Johor Bahru High Court. The respondent company's registered office is in Sarawak.

The petitioner claimed that the respondent is indebted to the petitioner in the sum of RM107,357.66 for goods sold and delivered. They had served a s. 218 notice and when there was no payment, filed this petition.

The respondent replied that they dispute the petitioner's claims and that the transactions between them was in Kuching and that the respondent's witnesses are in Kuching.

The respondent put forward two arguments in their application to strike out the petition:

(a) since the respondent is resident in Kuching - s. 23(1)(b) of the Courts of Judicature Act provides that it shall be the High Court of Borneo that has jurisdiction in this matter;

(b) considered from the point of convenience the transaction occured in Kuching and the witnesses are in Kuching - this matter should therefore be heard there.

Held:

[1] Section 23(1)(b) of the Courts of Judicature Act 1964 applies and as the respondent is residing in Kuching, the High Court of Borneo and not the High Court of Malaya has jurisdiction.

[2] Alternatively on the point of convenience the proper forum should be in Kuching.

[3] To transfer the petition to Kuching is not appropriate on account of (1) above. Further the petition for winding up is under a special law and requires close supervision and should be better that the same be refiled.

[Petition struck out with liberty to file afresh in Kuching.]

Cases referred to:

Sova Sdn. Bhd. v. Kasih Sayang Realty Sdn. Bhd. [1988] 2 MLJ 270
Syarikat Nip Kui Cheong Timber Contractor v. Safety Life and General Insurance Co. Sdn. Bhd. [1975] 2 MLJ 115

Legislation referred to:

Companies Act 1965, s. 218
Courts of Judicature Act 1964, ss. 3, 23, (1)(b)
Federal Constitution, art. 121(1)

For the respondent/appellant - B.H. Lee; M/s. Lim, Han & Teoh
For the petitioner/respondent - Ong Ban Chai; M/s. Ong Ban Chai & Co.

JUDGMENT

Abu Mansor Ali J:

The appellant/petitioner appeals against the order made by this Court striking out the appellant/petitioner's petition for the winding up of the respondent company on the ground that the Court did not have jurisdiction to entertain the petition or alternatively even if the Court had that jurisdiction, it held the forum convenience was elsewhere. The appeal raises the short question whether the petition should really be filed in High Court Borneo.

The facts of the case are as follows. In the petition itself the petitioner states that the respondent company was incorporated on 1 September 1982. The registered office of the company is at 1st Floor, Hockien Association Building, Lot 98-99, Green Hill Road, Kuching, Sarawak.

The petitioner alleged that the respondent is indebted to the petitioner in the sum of RM107,357.66 for the price of goods sold and delivered. On 5 September 1988 the petitioner served on the company the statutory notice dated 23 August 1988 pursuant to s. 218 of the Companies Act 1965 by leaving it at the Company's registered office but no payment was received since the service of that notice. Hence the petitioner filed the petition to wind up.

The respondent's application was supported by the affidavit of Chua Beng Thian, its managing director who deposed that the transaction between petitioner and respondent (if any) was done in Kuching. In any case, he denied that the respondent was indebted to the petitioner and he further said that the respondent's witnesses are residing in Kuching.

Mr. Lee for the respondent submitted that the issue before the Court was whether this Court had jurisdiction to entertain the petition or whether the forum convenience was Sarawak since the respondent is residing in Sarawak by having its registered office in Sarawak. He submitted that the petition is outside the jurisdiction of the Court to entertain.

Mr. Lee submitted further that the powers of the Malaysian Judiciary are set out in Art. 121(1) of the Federal Constitution. It is in two High Courts - Malaya and Borneo. Under s. 3 of the Courts of Judicature Act 1964 the local jurisdiction of the Courts in Malaya are the Malay States and the Straits Settlement and the local jurisdiction of the High Court Borneo is Sabah and Sarawak. He contended that since the registered office of the respondent company is in Kuching, this Court therefore has no jurisdiction in this matter for s. 23(1)(b) of the Courts of Judicature Act 1964 provides that the High Court will take cognizance of or try matters where the defendant or one of several defendants resides or has his place of business.

He submitted therefore that since the respondent is resident in Kuching, the Kuching High Court must assume jurisdiction. Alternatively considered from the point of view of forum convenience, the respondent is residing in Kuching and the witnesses are in Kuching and that the transaction was in Kuching, he submitted that it is still in Kuching. Counsel cited the case of *Sova Sdn. Bhd. v. Kasih Sayang Realty Sdn. Bhd.* [1988] 1 MLJ 270, 271 where my brother Judge, Lim Beng Choon held that it must have been within the contemplation of the legislature to distribute work according to the various High Courts for the convenience of all concerned. With respect I agree with that decision.

For the petitioner, Mr. Ong Ban Chai says this Court has jurisdiction for the Courts of Judicature Act 1964 has provided two High Courts and the matter can be filed and heard in either Sarawak or Malaya, the Court has the discretion to decide. He submitted further that if the Court decides that it has jurisdiction then it should be transferred to Kuala Lumpur.

I find Mr. Lee's argument to have some merits. I agree with Mr. Lee that which High Court has jurisdiction is clearly determined by s. 23 of the Courts of Judicature Act 1964 which reads:

> 23 (1) Subject to the limitations contained in Art. 128 of the Constitution the High Court shall have jurisdiction to try all civil proceeding where:
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> (a) the cause of action arose, or
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> (b) the defendant or one of several defendants resides or has his place of business, or
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> (c) the facts on which the proceedings are based exist or are alleged to have occured, or
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> (d) any land the ownership of which is disputed is situated,
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> within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

And which High Court again is determined by s. 3 of the Courts of Judicature Act 1964 which is either Malaya or Borneo. It is quite clear to me that the respondent company, residing in Kuching, would come under s. 23(1)(b) of the Courts Judicature Act. In *Syarikat Nip Kui Cheong Timber Contractor v. Safety and General Insurance Co. Sdn. Bhd.* [1975] 2 MLJ 115, 116 Hashim Yeop Sani, J (as he then was) held the definition of local jurisdiction (in s. 3 of the Courts of Judicature Act 1964) sets out the territorial jurisdiction of the High Court in Malaya and the High Court in Borneo as given in Art. 121 of the Constitution. While matters can be heard in any Court of the Courts in Malaya, I am of the view it was certainly not the intention of the legislature for any Court in Malaya to assume jurisdiction of a matter arising in or which should be filed in a Borneo Court. With respect I agree and adopt what is stated by Hashim J (as he then was) in *Syarikat Nip Kui Cheong Timber Contractor v. Safety Life and General Insurance Co. Sdn. Bhd*. (*supra*) that the definition of local jurisdiction sets out and determines the territorial jurisdiction of either of the High Courts (*sic*). By this I rule that since the defendant/respondent company is residing in Kuching, the matter should really be filed in Borneo High Court in particular Kuching.

Considered from the point of view of convenience, I also held that Kuching would be more convenient with the defendant residing there and the witnesses being there.

On the ground that the matter is in the High Court Borneo's jurisdiction to deal with and also alternatively on the ground of forum convenience being Kuching, I struck out the petition with liberty for petitioner to have it filed in Kuching. I did consider whether a transfer to Kuching was appropriate. I held that it was not as it was in the Borneo High Court's jurisdiction. In the event, I am wrong, High Court Borneo has a separate registry to administer and monitor their own cases in Kuching. The petition for winding up is under a special law and requires close supervision and that can only be done by the Kuching registry. I was of the view it was better that the petition be refiled at the proper registry. I duly struck out the matter. The petitioner appealed.

Also found at [1990] 1 CLJ 262